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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,223	11/25/2003	Josef Glockl	156.003US01	9192
27073 7590 03/07/2007 LEFFERT JAY & POLGLAZE, P.A. P.O. BOX 581009 MINNEAPOLIS, MN 55458-1009			EXAMINER LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/723,223	Applicant(s) GLOCKL, JOSEF	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-16, 18-21, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 6, 12, 13, 15, 16, 21 and 25 is/are rejected.
- 7) ☒ Claim(s) 2, 4, 7-10, 14 and 18-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 - The structure of the plurality of surface portions having an interior with different properties is unclear (i.e. is the surface a planar or 2-dimensional surface where the interior is within the outer periphery of the surface; or is the surface part of a 3-dimensional object and the interior is within the object – or under the surface; or other).

Claim 3 - It is unclear how the surface portions represent portions of the floor construction that are separated when claim 1 recites that the floor construction is a continuous unit.

Claim 6 – It is unclear how a surface has an interior with properties of at least one of a solid material, a loose material, materials having different grain size, etc. (i.e. how is the interior characterized with these properties).

Claim 9 - It is unclear how the homogeneous looking surface (of claim 1) can have one or two (less than the required 3) surface portions with perpendicularly standing bar portions and still be externally homogeneous.

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Claim 19 and 21 – It is unclear how a surface (2-dimensional plane) can comprise a closed internal space (3-dimensional). And further the structural relational arrangement of the closed internal space with the interior properties is unclear (is the closed internal space the same as the interior properties or in addition to, and if in addition to, how?).

### ***Claim Objections***

Claim 26 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 26 has not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5-6, 12-13, 15-16, 21, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Jourdan (WO 81/02384).

Regarding claims 1 and 5-6, 15-16 (as best understood): Jourdan discloses a structure (capable as being used as a covering for a floor either inside or outside as the exterior cover 5 is a waterproof upper surface, page 4, lines 16-17) comprising:

A plurality of surface portions (1), at least three of the plurality of surface portions having different interior properties from each other (having different solid foam hardnesses (page 4, lines 21-22) so that each of the at least three surface portions imparts a different sensory stimuli to a sole of a user's foot when the user steps on that surface portion; wherein the floor construction is formed as a continuous unit (where

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each of the blocks is disposed on a base layer resulting in a continuous unit) with an externally homogeneous looking surface (where sheet 5 is homogeneous looking and is externally covering the structure) , wherein the differing interior properties of the at least three surface portions are concealed from view.

Regarding claim 3 (as best understood): The structure according to claim 1, wherein the at least three surface portions having different interior properties from each other represent portions of the floor construction that are separated from each other (in that each surface portion is a separate block).

Regarding claims 12-13 (as best understood): The floor construction according to claim 1, further comprising an upper construction that contains the plurality of surface portions and is supported by a flexible sub-construction (2).

Regarding claim 18 (as best understood): The floor construction according to claim 1, wherein a transition between different surface portions of the at least three surface portions having different properties from each other is effected in an edge-free manner (figure 1 which shows the sides of the blocks arranged in an edge free manner).

Regarding claim 21 (as best understood): The floor construction according to claim 1, wherein each of the at least three surface portions having different properties from each other further comprises a closed internal space (where the blocks are 3-dimensional have a closed internal space as defined by the outer edges of the block), the internal spaces of the respective at least three surface portions having different properties from each other connected in a mutually communicative relationship and

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filled with a material of a predetermined viscosity or toughness (where the internal space comprises a foam).

Regarding claim 25: The floor construction according to claim 1, wherein the surface has a homogeneous looking surface roughness or surface structure (where sheet 5 provides a homogeneous looking surface).

### ***Allowable Subject Matter***

Claims 2, 4, 7-10, 14, 18-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL

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02/15/2007

  
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